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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

PERMITTING AND COMPLIANCE COMMITTEE

JOE SERNA JR., CAL/EPA HEADQUARTERS BUILDING

1001 I STREET

COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 10, 2008

10:04 A.M.

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CERTIFIED SHORTHAND REPORTER
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Ms. Rosalie Mulé, Chairperson

Ms. Margo Reid Brown

Ms. Cheryl Peace

BOARD MEMBERS

Mr. Wesley Chesbro

STAFF

Mr. Mark Leary, Executive Director

Mr. Elliot Block, Chief Counsel

Mr. Robert Holmes, Waste Compliance and Mitigation Program

Mr. Bill Orr, Chief, Cleanup, Closure & Financial
Assurances Division

Mr. Ted Rauh, Director, Waste Compliance & Mitigation
Program

ALSO PRESENT

Mr. Glenn Acosta, Los Angeles County Sanitation Districts

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1 PROCEEDINGS

2 CHAIRPERSON MULÉ: Good morning, everyone; and
3 welcome to the November meeting of the Permitting and
4 Compliance Committee.

5 We have agendas on the back table. And if anyone
6 would like to speak to the Committee, there's speaker
7 slips as well. Please fill them out, bring them up to
8 Donnell, and you'll have an opportunity to address the
9 Committee.

10 Before I forget, I'd like to ask everyone to
11 either please turn off or put in the silent mode your cell
12 phones and pagers.

13 And with that, Donnell, would you please call the
14 roll.

15 SECRETARY DUCLO: Brown?

16 COMMITTEE MEMBER BROWN: Here.

17 SECRETARY DUCLO: Peace?

18 COMMITTEE MEMBER PEACE: Here.

19 SECRETARY DUCLO: Chair Mulé?

20 CHAIRPERSON MULÉ: Here.

21 Any ex partes to report?

22 COMMITTEE MEMBER PEACE: Up to date. Thanks.

23 CHAIRPERSON MULÉ: Everybody's up to date.

24 And before we move forward with the Program
25 Director's Report, I'd like to recognize two very special

1 people who are in the audience today. Our former Chair,
2 Linda Moulton-Patterson, is here; and Bonnie Bruce, her
3 advisor. And actually she was interim director for the
4 Board for awhile.

5 It's really great to have you here. I was so
6 surprised to see you.

7 MS. MOULTON-PATTERSON: Great to be here.

8 CHAIRPERSON MULÉ: Thank you for being here and
9 joining us today.

10 Okay. With that, let's move to our Program
11 Director's Report.

12 Ted.

13 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR

14 RAUH: Yes. Thank you, Chair Mulé.

15 I am Ted Rauh, the Program Director for Waste
16 Compliance and Mitigation Program. I have a couple of
17 items to go over with you today.

18 First, I just wanted to both thank you, Chair
19 Mulé, and you, Board Member Peace, and also Mark Leary for
20 your attendance at the LEA conference, which was very
21 successful. We had 350 attendees, of which over 200 were
22 LEA and EA staff. And we also had 35 members from the
23 regulated community this year, which was the largest
24 contingency we've had. And they expressed interest in
25 more involvement in the future. So we're looking forward

1 to even expanding their involvement in the coming year.

2 Also, I wanted to bring your attention to the
3 fact that the second annual joint meeting of the Illegal
4 Dumping Task Force was held on the 22nd of October. And
5 this was a follow-up to continue their review of work done
6 by the Board and a select group of that membership on the
7 communication strategy that the Board directed a year ago.
8 This had to do with the staff and the task force putting
9 together a toolbox for local governments to be able to use
10 in improving their illegal dumping activities and also to
11 expanding their programs. And the work is largely
12 completed now. We're in the process with this last review
13 of working to put it on the Board's website. And that was
14 a very successful effort.

15 I, also, wanted to indicate that the group also
16 discussed two items that had been part of their
17 recommendations to you in the past. One had to do with
18 the amount or type of evidence that is necessary to
19 demonstrate an illegal dump citation. And as you recall,
20 that was part of the legislative conversation last year.
21 And the task force is continuing to work with industry
22 representatives on what makes or constitutes an effective
23 finding of proof for illegal dumping.

24 Second area they were looking at, as well, was
25 the nexus between service providers of minor removal of

1 waste items from households and the contract franchise
2 waste removal companies. And there was some concern in
3 legislation the Board sponsored last year about the fact
4 that there could be conflicts in any kind of illegal
5 dumping program put together by a local government between
6 those entities, those that they might want to regulate to
7 make sure that they're -- they are picking up small
8 quantities of household waste items and taking them
9 directly to landfills, and the franchise haulers who have
10 a franchise agreement to do the same kind of work. So a
11 work group has been put together by representatives of the
12 franchise and waste industry and some of the local
13 governments who are interested in regulation in this area
14 to continue to work on that situation.

15 And as they develop information, we'll obviously
16 pass it back to you.

17 Third area I just wanted to mention quickly is
18 the Streamline Manifest Enforcement Program. We have
19 reported on that on a regular basis. It appears now that
20 we're over the backlog of prior cases. We have 84
21 streamline enforcement letters out in the field now. And
22 of those, 68 have reached agreement with the Board, for a
23 compliance rate of over 80 percent. Only 2 of those 84
24 chose to go through the normal enforcement process, and
25 we're processing them in that fashion now.

1 And the remaining cases are basically just in the
2 negotiation or processing mode. If they all come in,
3 we'll have over a 95 percent compliance rate with that
4 program. So we continue to be very excited about that.

5 And that concludes my report today.

6 CHAIRPERSON MULÉ: Great. Thank you, Ted.

7 Do we have any questions for Ted?

8 And I'd also like to recognize Board Member
9 Chesbro. And if I may, I'd like to congratulate you on
10 your victory. Only 70 percent of the vote?

11 BOARD MEMBER CHESBRO: Did the best I could.

12 CHAIRPERSON MULÉ: I mean couldn't -- I thought
13 it was going to be a landslide.

14 (Laughter.)

15 COMMITTEE MEMBER BROWN: I heard it was. Even
16 from where I was, which was not in California -- I
17 absentee balloted, just for the record -- the stories -- I
18 guess the account is that the Obama strategy in California
19 was to ride Wesley's coattails.

20 (Laughter.)

21 COMMITTEE MEMBER BROWN: Very successful. Thank
22 you. Congratulations.

23 BOARD MEMBER CHESBRO: Well, thanks. That's very
24 kind of you.

25 COMMITTEE MEMBER BROWN: It's a double-edged

1 sword for us.

2 CHAIRPERSON MULÉ: Yes, yes. While we're very
3 excited and happy for you --

4 BOARD MEMBER CHESBRO: Well, I'll have more to
5 say later about this. But let me just say it's not
6 without mixed emotions. I've really enjoyed the time here
7 very much. As you all know, this subject matter was my
8 first love.

9 CHAIRPERSON MULÉ: Congratulations.

10 Okay. With that, let's get into our agenda.

11 Ted.

12 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR

13 RAUH: Yes, thank you, Chair Mulé.

14 Our first and only item today is the
15 Consideration of the Adoption of Proposed Regulations on
16 Active Disposal Site Gas Monitoring and Control
17 Compliance.

18 At its August 19, 2008, meeting, the Board
19 directed staff to notice for a 45-day public comment
20 proposed regulatory text to amend compliance deadlines
21 associated with existing disposal site gas monitoring and
22 control regulations.

23 The Board directed staff to pursue this course of
24 action based on testimony during the hearing that there
25 was a strong likelihood that a very large number of active

1 disposal sites would be out of compliance with the new
2 regulatory requirements on September 21st of this year.

3 The public comment period for the proposed
4 amended compliance deadlines ran from September 12th to
5 October 27th. Staff held a public hearing on October 29.

6 At the August meeting, the Board also directed
7 staff to take several actions to facilitate industry
8 compliance with the gas monitoring regulations. I'd like
9 to summarize our progress to date on that direction.

10 (Thereupon an overhead presentation was
11 Presented as follows.)

12 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR

13 RAUH: With regard to the landfill gas monitoring
14 regulation training, we have completed five separate
15 sessions across the state, with the latest one being
16 completed at the LEA conference last week.

17 With regard to the landfill gas monitoring best
18 management practices, we did form an expert group
19 utilizing the SES contract proposed guidance. We have
20 completed a best management practices, and that is now on
21 the Board web page for use by industry in complying with
22 the regulations.

23 With regard to landfill gas program plan review,
24 we agreed and develop a set of business practices, by
25 which Board staff is reviewing these documents. And

1 because of the value to industry to understand that
2 process, we published those to comment and then published
3 a final set, which are also on the Board's website.

4 We've also worked with DTSC to provide additional
5 engineering geologists and geology staff to provide
6 technical review of the specific geologic underpinnings of
7 these gas plans as they come in.

8 And, finally, as part of the joint LEA staff
9 review, that is now working effectively. We have 87 plans
10 that have either been reviewed or are in the review
11 process. And that's working quite effectively at this
12 point.

13 The purpose of this item before you today is to
14 request consideration of adoption of the proposed
15 regulations. After review of the public comments received
16 during the public comment period, staff is recommending
17 that the Board direct staff to make revisions to the
18 proposed regulations, as indicated in Attachment 1
19 revised -- and actually I believe that's up on the screen
20 for you here -- and then notice the regulations for an
21 additional 15-day public review and comment period.

22 Here to present the item in a more detailed sense
23 is Bob Holmes, and to my right Bill Orr for any technical
24 questions on the regs.

25 Thank you.

1 CHAIRPERSON MULÉ: Thank you, Ted.

2 Good morning.

3 MR. HOLMES: Good morning, Madam Chair and
4 members.

5 As Ted mentioned, the Board directed staff to
6 initiate the formal public rulemaking for this package on
7 August 19th. The 45-day comment period ran from September
8 12th through October 27th. And we received three comment
9 letters during that comment period.

10 We also held a public hearing on the 29th, during
11 which two commenters spoke.

12 We have taken the combined comments from the
13 public hearing and the 45-day comment period and -- which
14 resulted in eight different comments, and summarized those
15 for you on Attachment 2.

16 There are five of those for which staff are not
17 recommending any changes and three for which we are
18 recommending changes. So I thought I'd walk you through
19 first those that we are not recommending changes and then
20 go back to Attachment 1, which is the proposed text, to
21 walk through the changes.

22 So the first comment for which we are not
23 recommending changes, comment 1, is essentially two
24 commenters in support of the Board expediting this
25 rulemaking through. No comment necessary other than to

1 thank them for their comment.

2 Comment No. 2 has to do with wood waste

3 landfills. And it was kind of a two-part or three-part.

4 First, it was a question as to whether or not these

5 regulations, not just this rulemaking, but the active

6 disposal site and closed disposal site gas monitoring and

7 control standards apply to wood waste in general. The

8 response is, yes, they do apply to wood waste landfills.

9 But since the wood waste landfill is not an MSW landfill,

10 the wood waste landfill would be eligible for an exemption

11 if they did so qualify.

12 So, essentially, what we're saying is wood waste

13 landfills can generate gas. There may be threats to

14 public health and safety. Therefore, they should apply

15 and the Board should -- and the EA should monitor those

16 sites.

17 Comment No. 5 has to do with limiting the

18 extension that the Board may grant to the full

19 implementation of the program plan. The commenter asked

20 for a cap or a not-to-exceed date to be put in that

21 extension.

22 We received pretty clear direction from the Board

23 in August with respect to this. And it is our feeling

24 that it's not appropriate to insert that cap. Within the

25 existing regulations, the operator's required to submit a

1 schedule. And the Board is approving that schedule when
2 it grants that extension. And, therefore, there is an
3 endpoint. But it's just not something that's set in the
4 regulations, which, you know, we may bump up against that
5 if there's something set. There may be reasons beyond the
6 operator's control for not meeting that deadline. So we
7 think it's appropriate as is, no change recommended.

8 Comment No. 6 has to do with a -- or is a
9 suggestion to change -- replace the word "failure" with
10 the word "inability". Staff doesn't feel that change is
11 warranted in either case and it represents noncompliance
12 with the regulation and it's not necessary to make the
13 change.

14 And then, finally, Comment No. 8 is not a request
15 to change the regulation. It's a request to include in
16 the Final Statement of Reasons examples for reasons beyond
17 the operator's control and then the staff intention to do
18 that.

19 Any questions about the comments for which the
20 staff are not recommending changes to the text?

21 COMMITTEE MEMBER BROWN: Did you just -- that was
22 a list of something that's not changed and you're not
23 listing examples?

24 MR. HOLMES: No.

25 COMMITTEE MEMBER BROWN: Or did you say you are

1 going to add examples?

2 MR. HOLMES: No change to the text. But we will
3 include -- intend to include in the final statement of
4 reasons examples.

5 COMMITTEE MEMBER BROWN: "Such as, but not
6 limited to"?

7 MR. HOLMES: No, this is --

8 COMMITTEE MEMBER BROWN: No, no, no. I'm asking
9 you, when you do it, are you going to put "such as, but
10 not limited to"? Because there's no way under the sun to
11 include every single reason that might creep up.

12 MR. HOLMES: Yes, certainly. And we also have
13 talked about including not only what would qualify, but
14 what would not.

15 COMMITTEE MEMBER BROWN: Okay. I don't want to
16 box ourselves in and get into a situation where it's not
17 workable after we've gone through all of this process and
18 understandings and misunderstandings, that I just want to
19 make sure we leave ourselves some latitude, if necessary.

20 MR. HOLMES: Yes, understood.

21 COMMITTEE MEMBER BROWN: Thanks, Bob.

22 MR. HOLMES: Okay. So if there are no further
23 questions about those that we are not recommending
24 changes, I will divert your attention to Attachment 1
25 revised. This is the reg text for which we would be

1 asking direction to initiate an additional 15-day comment
2 period.

3 --o0o--

4 MR. HOLMES: Comment No. 3 relates to the changes
5 that appear starting on line 29 through 38 we'll show in
6 double underline and double strike-through in blue font on
7 your screen.

8 This section relates to when the regulations
9 apply to closed sites. The regulations require
10 that -- or -- yes, require that closed sites apply with
11 the regulations immediately, because these are the same
12 regulations that have applied to closed sites since 1990.
13 There is one exception and, that is, to the prescriptive
14 death standard that's found in Section 20925(c)(1).
15 That's the standard that prescribes how deep the wells and
16 the probes need to be.

17 Since the Board modified that standard in 2007,
18 we were proposing and were directed to provide a temporary
19 grandfathering with that standard, until such time as new
20 wells and probes or existing wells and probes -- new wells
21 and probes are installed or existing wells are modified.

22 So that is what the 45-day text provided.

23 However, there was an issue that the commenter
24 brought up, and the Board staff agreed with, that the
25 wording suggested that the only way that the operator can

1 comply when they do install -- the new wells are
2 modified -- is with the prescriptive part of that
3 standard, which is the depth to the waste at any part of
4 the landfill. That was not our intention. We also would
5 like them to be eligible for an alternative standard. And
6 so that is the reason for the change here and clarifying
7 that they can qualify -- they can either meet the
8 prescriptive or the alternative standard.

9 Commenter number -- or Comment No. 4, turning now
10 to page 2, lines 4 through 5. This is the section that
11 provides -- or allows the Board to authorize an extension
12 to the full implementation of the plan. The commenter
13 suggested that it should be the local enforcement agency
14 that does this extension. And, of course, we also
15 received clear direction here. We believe that it is
16 appropriate for the Board to maintain that authority,
17 because it will provide a clear statewide applicability of
18 that. However, we do recognize the value that the LEAs
19 propose and so we are offering here that the Board will
20 maintain that authority but will consult with the EA prior
21 to making that determination.

22 This change also repeats itself in line 19 and
23 20, because that's because the difference in the size of
24 the sites.

25 Comment No. 7 relates to the prohibition on the

1 enforcement agency during one of these extensions. So the
2 Board has approved an extension. The language prohibits
3 the EA from citing a violation or taking an enforcement
4 action against the operator for failure to implement all
5 parts of their program, essentially how it reads. The
6 commenter pointed out that there may be parts of the
7 program that are within their control, in other words, are
8 not part of the Board's reason for extending. And so the
9 operator should still be moving forward with those.

10 So the changes to lines 12 through 13 and also 27
11 through 28 are providing clarity that they are prohibited
12 from taking those actions only on those aspects that are
13 beyond their control or that are part of the Board's
14 approved extension.

15 So with that, those are the changes. And we
16 request that you approve Option No. 2 and direct us to
17 make the revisions as indicated in Attachment 1 and notice
18 those for an additional 15-day public comment period.

19 CHAIRPERSON MULÉ: Thank you, Bob.

20 We do have one speaker. So let's have him come
21 up. Glenn Acosta. And then we'll take questions from the
22 Committee for staff.

23 MR. ACOSTA: Good morning, Madam Chair and
24 Committee members and our new assemblyman.
25 Congratulations.

1 I just wanted to express our appreciation for the
2 exceptional job that staff has done on this reg package.
3 They've adequately addressed our comments. And so I
4 recommend moving forward with the reg package as is. And
5 I just wanted to say thank you.

6 CHAIRPERSON MULÉ: Thank you for being here. And
7 thank you for your participation in the process.

8 Any questions for staff?

9 Board Member Peace.

10 COMMITTEE MEMBER PEACE: In the final statement
11 of reasons that you were talking about where we're going
12 to include these reasons that might be beyond the
13 operator's control, we still have discretion over that. I
14 mean, we're just giving examples of things that could be a
15 reason but not necessarily something we have to approve
16 just because it's listed as a reason?

17 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR

18 RAUH: Yes, we would be providing examples of those things
19 that could be approved and those things that might not be
20 approved.

21 COMMITTEE MEMBER PEACE: But it would still be
22 could be, not --

23 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR

24 RAUH: But it would be examples. Only it's not an
25 automatic and it's not limiting us, as Chair Brown

1 suggested.

2 COMMITTEE MEMBER PEACE: Okay, perfect. Thank
3 you.

4 CHAIRPERSON MULÉ: Okay. Any other questions?
5 With that, do I have a motion?

6 COMMITTEE MEMBER BROWN: I move Resolution
7 2008-179.

8 CHIEF COUNSEL BLOCK: Wait.

9 COMMITTEE MEMBER PEACE: Second.

10 COMMITTEE MEMBER BROWN: Wait, wait.

11 COMMITTEE MEMBER PEACE: I take it back.

12 COMMITTEE MEMBER BROWN: Actually, is there a
13 resolution when we're directing to go out for an
14 additional 15-day comment period?

15 CHIEF COUNSEL BLOCK: No. And, in fact, the
16 resolution there would be if you had decided to go ahead
17 and adopt the regulation. So you do not want to adopt
18 that -- you do not want to adopt that regulation.

19 CHAIRPERSON MULÉ: So the direction is --

20 COMMITTEE MEMBER BROWN: Strike that.

21 MR. HOLMES: We'll recycle that resolution.

22 COMMITTEE MEMBER BROWN: That's a great idea.

23 CHAIRPERSON MULÉ: We'll reuse it at a later
24 date.

25 CHIEF COUNSEL BLOCK: Yeah, it's just a direction

1 item.

2 CHAIRPERSON MULÉ: Okay. We'll direct staff to
3 go out for the 15-day -- additional 15-day. All righty?

4 Okay. Thank you.

5 Any other comments?

6 From the public?

7 With that, this meeting is adjourned.

8 Thank you.

9 (Thereupon the California Integrated Waste
10 Management Board, Permitting and Compliance
11 Committee meeting adjourned at 10:26 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Management Board,
7 Permitting and Compliance Committee meeting was reported
8 in shorthand by me, James F. Peters, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 18th day of November, 2008.

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23 JAMES F. PETERS, CSR, RPR

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